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JUL 30 2010

CLERK U.S. DISTRICT COURT  
SIOUX FALLS, S. DAK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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MUELLER PALLETS, LLC,

Plaintiff,

vs.

VERMEER MANUFACTURING  
COMPANY,

Defendant.

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CIV 09-4016

ORDER

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Pending before the Court is a Stipulation to Partially Dismiss Claims, Doc. 46, in which counsel for both parties stipulate that Count Three (negligence) and Count Four (strict liability) of Plaintiff's Second Amended Complaint can be dismissed with prejudice as a result of the application of the economic loss doctrine. In addition, the parties have stipulated that Count Six (exemplary damages) of Plaintiff's Second Amended Complaint shall also be dismissed with prejudice, subject to Plaintiff's right to move to amend its Complaint in the future should additional tort claims be discovered. After consideration of the Stipulation, together with the file in this matter,

IT IS ORDERED:

1. That the Stipulation to Partially Dismiss Claims, Doc. 46, is granted.
2. That Count Three (negligence) and Count Four (strict liability) of Plaintiff's Second Amended Complaint is dismissed with prejudice.
3. That Count Six (exemplary damages) of Plaintiff's Second Amended Complaint is dismissed with prejudice, subject to Plaintiff's right to move to amend its Complaint should additional tort claims be discovered.
4. That Defendant's pending Motion for Summary Judgment is denied as moot.

Dated this 30<sup>th</sup> day of July, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lawrence L. Piersol", written over a horizontal line.

Lawrence L. Piersol  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:   
DEPUTY

A handwritten signature in black ink, appearing to read "Jackie Messersheimer", written over a horizontal line.